



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,851	11/24/2003	Alison Lewey	45317/043128	2951
30472 7590 06/27/2007 ANTHONY D. PELLEGRINI RUDMAN & WINCHELL, LLC 84 HARLOW STREET P.O. BOX 1401 BANGOR, ME 04402-1401			EXAMINER LEVY, NEIL S	
			ART UNIT 1615	PAPER NUMBER
			MAIL DATE 06/27/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/719,851

Applicant(s)

LEWEY, ALISON

Examiner

NEIL LEVY

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3,4 and 6-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3,4 and 6-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 3,4 and 6-15 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s).

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) .
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>11/24/03</u> | 6) <input type="checkbox"/> Other: _____ |

Office Action Summary

Application No.

10/719,851

Applicant(s)

LEWEY, ALISON

Examiner

NEIL LEVY

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3,4 and 6-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3,4 and 6-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 3,4 and 6-15 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 11/24/03
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Art Unit: 1615

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Species of 5 compounds of claim 4 in the reply filed on 4/13/07 is acknowledged.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over BESSETTE-6974584.

Repelling insects from skin with safe compositions (column 2, lines 9-16) of (column 2, lines 45+) essential oils and carriers (the instant inactives). Oils are at column 3, lines 14-33 and D at column 7. Solvents, soy bean oil, are at column 4, line 55+.

Art Unit: 1615

Claim1. 3, 4, 6, 8-12, and 14 are rejected under 35 U.S.C. 102(a & e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious overKEEN US 2003/0198696

The instant compositions are fish oil or vegetable oils, the instant inactives and emulsifiers (claim 1 and b, with instant actives (claim 2) at instant % (1-99%) claim 8 and mixed with carrier at 1-50% (claim 15). Claim 18 specifies repellent effects on insects.

Claim3, 4, 6, 8-12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over KHAZAN-Enache US 2003/0175369 and Keen- us 2003/0198696 in view of Bessette et al -US 20030194454

KHAZAN-GRAS essential oils as insect repellents are well known [0014, 0016] and those of the instant [0022] at 0.1-45% [0026] with vegetable oils Table 1, soy is not specified. KEEN shows these ingredients. With lemon grass oil, and soy bean oil are safe pesticidal alternatives. Thus, use of soy oil as KHAZAN teaches vegetable oil and added lemon grass and other oils of KEEN would increase the range of activity of the repellent compositions to more than just moths.

BESSETTE also shows the instant [0060] essential oils to be desirable as insect repellents [0066] at 5-99% inert carriers, of soy oil [0068]. The oils are seen as 0.0001-10% each [0075].

Khazan & Keen show the instant

invention, but not specifically all the oils & vehicles/solvents/added organics. Added oils are shown by the secondary references, providing additional & alternative essential oils & soy bean oil. It would have been obvious to a person of ordinary skill in the art at the time the invention was made, desiring to utilize GRAS compositions, to use those well known in the art, as exemplified by the primary references, with selection of the equivalent OILS at concentration effective to control pests.

All the critical elements of the instant invention are disclosed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired

Art Unit: 1615

effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular pest species and crop interest, reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects.

Applicant has not provided any objective evidence of criticality, non-obvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed, and the use of ingredient for the functionality for which they are known to be used is not a basis for patentability.

The instant invention provides well known old art recognized compounds, with well known art recognized effects, applied by well known methods to achieve control over mollusks as is well known in the art.

Claims 3,4,6-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over ROLF US 2004/0071757 in view of BESSETTE et al. & Culpepper '95

@ Rolf, See [0073] the instant essential oils, as compositions of mixtures with inert organics-polymers, acids, lecithin, alcohols [0102] at 1-70% [0103] and with fish oil, mineral oil [0130]. The oil are seen at 1-5% each (Examples) and serve as antimicrobials. BESSETTE show [0054] antimicrobials include the instant compositions [see above) with soy bean carrier.

Culpepper is cited to show the advantage of wheat oil(p. 270,271)- it is useful to smooth skin, & wheat bran meal is helpful against venomous creatures. Absent any showing of objective evidence of nonobvious or unexpected results, adding Culpeppers wheat oils to the cited compositions can only enhance their effectiveness & aesthetic properties when applied to skin.

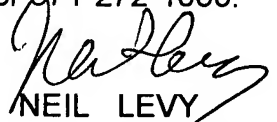
Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619.

The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

Art Unit: 1615

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



NEIL LEVY
Primary Examiner
Art Unit 1615
